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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DONALD S. TOOMER,
Defendant.

CASE NO: 17-CR-00193-HDM-CWH

**GOVERNMENT'S RULE 48 MOTION
TO DISMISS THE INDICTMENT**

The United State of America, by and through DAYLE ELIESON, United States Attorney, and NICHOLAS P. GRIPPO, Special Assistant United States Attorney, respectfully moves to dismiss the indictment pursuant to Fed. R. Crim. P. 48(a). In support of its motion, the government submits the following Memorandum of Points and Authorities.

Memorandum of Points and Authorities

A. Legal Standard for Government's Voluntary Dismissal of an Indictment

Rule 48(a) of the Federal Rules of Criminal Procedure, governing "Dismissal, (a) By the Government," provides that, "The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent." Upon showing of a

proper purpose, a prosecutor's Rule 48 motion to dismiss should be granted. *See, e.g., United States v. Smith*, 55 F.3d 157 (4th Cir. 1995).

B. Good Cause Supports Dismissing the Indictment

In February 2019, about a month before this case previously was scheduled to go to trial, the United States (through the United States Attorney's Office in the District of New Jersey) and the defendant entered into a plea agreement pursuant to which the defendant agreed to plead guilty in the United States District Court for the District of New Jersey to a one-count information charging him with making and subscribing a false tax return for tax year 2010, in violation of 26 U.S.C. § 7206(1) (the "DNJ Plea Agreement"). Count Two of the indictment pending in this case also charges the defendant with making and subscribing a false tax return for tax year 2010 in violation of 26 U.S.C. § 7206(1). The DNJ Plea Agreement was entered into under Federal Rule of Criminal Procedure 11(c)(1)(C) and included a stipulated sentence of three years' probation. The DNJ Plea Agreement provided, among other things, that if the court accepted the stipulated sentence and imposed that sentence, the United States would move to dismiss the indictment pending in this matter.

Consistent with the DNJ Plea Agreement, on February 22, 2019, the defendant appeared in the United States District Court for the District of New Jersey and entered a guilty plea to a one-count information (the "DNJ Case"). *See* Dkt. No 103 (attaching copies of the DNJ Plea Agreement and criminal information

1 filed in the DNJ Case). On March 18, 2019, the court in the DNJ Case sentenced
2 Toomer to three years' probation and ordered him to pay restitution to the IRS,
3 consistent with the DNJ Plea Agreement.

4 In light of the defendant's guilty plea in the DNJ Case to the same offense
5 and tax year charged in one of the counts of the indictment in this case, the
6 government seeks dismissal the indictment as a matter of judicial economy to avoid
7 further expenditure of prosecutorial and judicial resources. Accordingly, and
8 consistent with the terms of the DNJ Plea Agreement, the government seeks leave
9 of this Court to dismiss the indictment under Fed. R. Crim. P. 48(a), and
10 respectfully requests that the Court vacate the current trial setting of June 11,
11 2019.

Conclusion

WHEREFORE, for all the foregoing reasons, the United States respectfully requests that the Court grant the government's Rule 48 Motion, enter an Order dismissing the indictment, and vacate the current trial setting of June 11, 2019. For the convenience of the Court, the government attaches a proposed draft Order.

DATED this 19th day of March, 2019.

Respectfully submitted,

DAYLE ELIESON
United States Attorney

/s/ Nicholas P. Grippo

NICHOLAS P. GRIPPO
Special Assistant United States Attorney

1
2 **UNITED STATES DISTRICT COURT**
3 **DISTRICT OF NEVADA**

4 UNITED STATES OF AMERICA,
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ORDER

11 This matter coming on the government's Rule 48(a) Motion to Dismiss the
12 Indictment, the Court having considered the premises therein, and good cause
13 showing, the Motion is GRANTED.

14 The Indictment shall be and is DISMISSED. The jury trial currently
15 scheduled in this case for June 11, 2019, is hereby VACATED.

16 IT IS SO ORDERED.

17 

18 HOWARD D. MCKIBBEN
19 United States District Judge

20 DATED this 20 day of March, 2019.